

## **Rule 375-1-1-.06 Appeals for Hearings**

- (1) Where state law permits appeal of Department decisions or actions, the subject party of such may submit an appeal request for hearing. The purpose of the appeal will be to determine whether the Department acted in accordance with the law in taking such action.
  - (a) Upon receipt of a timely, properly filed appeal in a contested case which is not presided over by the agency head or board or body which is the ultimate decision maker in accordance with O.C.G.A. § 50-13-41, the Department will forward the appeal and all pertinent documents to the Office of State Administrative Hearings in accordance with that agency's rules.
  - (b) An appeal will not stay agency action except in accordance with O.C.G.A. §§ 40-5-67.1 (g)(3) and 40-9-32 (c)(1).
- (2) Cases shall be conducted in accordance with the following procedures:
  - (a) Initiating a case. Any person who is legally entitled to contest a ruling or order of the Department may do so by filing with the Department a request for hearing within ten (10) days after receipt of the Department's ruling or order, except where additional time is permitted under O.C.G.A. §§ 40-5-35 and 40-5-67.1. Notice is considered received four (4) days after mailing.
  - (b) Request for hearing shall be submitted to DDS via postal service to the address included in the notice of agency action or a Customer Service Center, on a form prescribed and furnished by the department which shall be completed in its entirety and must contain the following:
    - (i) The legal authority under which the appeal is filed, including all code sections;
    - (ii) A prayer setting forth the relief sought;
  - (c) All requests for a hearing must be signed by the party requesting the hearing or by the party's counsel, if represented by counsel.
  - (d) Limitation on right to a hearing. The Department will grant hearings as a matter of right only upon timely receipt of a complete request as described above, but may, in its discretion, allow extensions of time and amendments of requests for good cause shown. Where requests are not submitted in accordance with the above, rights to an appeal and hearing shall be considered waived.
  - (e) Hearings. All hearings will be held in accordance with all applicable statutes and rules.
  - (f) Appeals of suspensions imposed pursuant to O.C.G.A. § 40-5-67.1.
    - (i) In addition to the requirements set forth in paragraph (2) (a-d), supra, any person who appeals an administrative license suspension or implied consent suspension arising under O.C.G.A. § 40-5-67.1 shall submit a nonrefundable filing fee of \$150.00. The timeliness provisions of paragraph (3), supra, shall apply to the payment of such fees, except that for appeals authorized by O.C.G.A. § 40-5-67.1 the appeal shall be timely

if received or postmarked within thirty (30) calendar days of the issuance or serve date of the notice of intent to suspend (1205 or 1205s). The hearings unit will not accept hearing requests by fax.

(ii) In hearings conducted pursuant to O.C.G.A. § 40-5-67.1, the arresting law enforcement officer may act on behalf of the Department as the complainant.

(iii) Withdrawal of Suspension by Arresting Officer.

- 1) The arresting officer may at his or her discretion withdraw the administrative license suspension at any time prior to the docketing of the case at OSAH.
- 2) If the licensee does not timely appeal the suspension, the suspension shall be upheld as the Final Decision of the Department by operation of law, and the arresting officer may not withdraw the administrative license suspension thereafter.
- 3) If the licensee submits an appeal within the statutorily allotted period for same, the arresting officer may withdraw the administrative license suspension at his or her discretion at any point prior to the issuance of the Final Decision by the Administrative Law Judge. Upon the issuance of the Final Decision, the arresting officer may not withdraw the suspension.

(iv) If the licensee does not timely appeal the suspension as set forth in paragraph (f) (i), the right to a hearing will be deemed waived.

- 1) The decision as to the timeliness of the hearing shall be a final decision of the Department, unless granted reconsideration.
- 2) If a hearing request has been deemed untimely, the licensee may request reconsideration by mail, in writing to RM - Hearing Requests, P.O. Box 80447, Conyers, Georgia 30013. The request must be received or postmarked within five (5) calendar days after the date of the decision.
- 3) The request for reconsideration must be submitted in writing and include:
  - a) A clear indication of the reasons for failure to timely submit the hearing request
  - b) Documentation to support the indicated reasons
  - c) A copy of the 1205 notice
  - d) Documentation from the U.S. Postal Service, UPS, FedEx, or any other deliver entity indicating dates of delivery.
- 4) The decision from the request to reconsider shall be a final decision of the Department.

- (g) Any decision issued by the Department or by an Administrative Law Judge in a matter referred to the Office of State Administrative Hearings shall be the Department's Final Decision without further agency action and without the expiration of a 30-day review period unless expressly provided elsewhere in these rules or by statute.
- (h) Any appeals to the superior court from a final agency decision under this rule shall be served in accordance with Ga. Comp. R. & Regs. R. 375-1-1-.02. Agency action shall not be stayed while such appeal is pending.

**Authority: O.C.G.A. §§ 40-5-4, 40-5-35, 40-5-66, 40-5-67.1, 40-9-32, 40-16-2, 40-16-3, 50-13-11 et seq..**

## **SYNOPSIS**

### **STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED RULE**

The purpose of this new rule is to consolidate and update agency rules and regulations and to align the rules with current Department procedure and the law. This rule encompasses all appeal procedures, including those included in Ga. Comp. R. & Regs. R. 375-1-6-.01 and Ga. Comp. R. & Regs. R. 375-3-3-.04 which have been proposed for repeal.